

1 A No, we didn't negotiate on
2 specific regions that I recall.

3 Q During those 2006 discussions, I'm
4 talking about the one in August of 2006 --

5 A Right.

6 Q -- did Comcast ever mention low
7 demand for MASN anywhere?

8 A No, there was no discussion of
9 demand.

10 Q And except for the Adelphia
11 subscribers you just mentioned, 150,000, did
12 you understand that MASN would be carried
13 everywhere else?

14 A Yes.

15 Q When did you first find out that
16 wasn't the case?

17 A My first -- the first time I heard
18 about it was in January of 2007, when somebody
19 at MASN mentioned that there were some systems
20 that had not been launched.

21 Q What was your reaction?

22 A That's a problem.

1 Q Why is it a problem?

2 A Because they had committed to
3 launching everything other than those Adelphia
4 systems constituting 150,000 subscribers,
5 what's called as Adelphia systems so I don't
6 have to keep saying 150,000 subscribers.

7 Q Sure, as long as the Judge can
8 understand you, I'm with you.

9 JUDGE SIPPEL: It's the record that
10 has to -- yeah, that's fine, that's fine, sir
11 for now.

12 BY MR. KIM:

13 Q And Mr. Gluck, just let me ask you
14 about that, though. You said that's not your
15 understanding but do you recall the affiliate
16 agreement that was red lined and sent back to
17 you?

18 A Yes.

19 Q Wasn't the word "all" crossed out
20 by Comcast?

21 A Yes.

22 Q What was your understanding of why

1 they did that?

2 A Well, actually what happened was
3 Andrew Rosenberg, the lawyer for Comcast, sent
4 a redraft back on the 4th of August some time
5 fairly shortly, fairly close to the deadline
6 where we had to make the decision about
7 electing arbitration or going to the ALJ, in
8 which he red-lined the agreement, took out the
9 word "all" and attached a list of systems to
10 Schedule A.

11 And so I called Andrew and said --
12 and the e-mail that he sent to me said, "This
13 reflects the deal we've been discussing", as
14 well as some clean-up changes that related to
15 the list of systems. And so I called Andrew
16 and I said, "What are we doing here, why did
17 you make this change"? He said, "I want to
18 make sure it reflects that the Adelphia
19 systems aren't included in here, because it's
20 not all systems we're launching." And I said,
21 "Okay, I understand where you're going with
22 that".

1 Q So he told you it wasn't -- the
2 reason why "all" was struck was because it
3 wasn't all, it was Adelphia out?

4 A Right, Adelphia was out.

5 Q Did he mention anything else that
6 was out and that's why they wanted to change
7 "all"?

8 A They never said anything else was
9 going to be excluded.

10 Q Well, let me ask you another
11 question. Didn't the agreement that he sent
12 back to you when he struck out "all" also
13 inserted a line about Comcast discretion?

14 A Yeah, we talked about that, too.

15 Q Okay, well, tell me how that
16 discussion went.

17 A The discretion issue had to do
18 with, what Andrew said was, with respect to
19 the Adelphia systems, number one, we hadn't
20 set a date certain for them to launch the
21 Adelphia systems because they couldn't tell us
22 when they'd be upgraded, because Allen

1 Dannenbaum had said, "We don't know what we
2 have". I took him at his word for that. So
3 they didn't want a date certain for that.

4 And then also we discussed if
5 Comcast -- this is a long-term agreement, I
6 think it goes to 2016. If Comcast acquired
7 additional systems from other operators during
8 the term, they could launch those. So that's
9 what we were addressing there and I was
10 comfortable with that. And this was not the
11 first agreement I'd done with Andrew.

12 Q During those discussions that --
13 again, we're talking about August 2006, the
14 2nd to the 4th time period.

15 A Okay.

16 Q When you went to those discussions
17 for MASN were you concerned about getting
18 carriage in the Baltimore DMA?

19 A Yeah.

20 Q Did you mention Baltimore to the
21 Comcast folks?

22 A I don't -- no, no.

1 Q Why didn't you mention Baltimore,
2 it was important to you?

3 A Because what we said is we want
4 everything. We want all systems and then what
5 was done was systems were taken away from that
6 and that's the Adelpia system we're talking
7 about and that's it. But everything else we
8 were going to get, so there's no reason to
9 say, "Is Baltimore included, is Washington
10 included"?

11 Q Did you tell the Comcast
12 negotiators, "We want Harrisburg, it's the
13 capital of Pennsylvania"?

14 A No.

15 Q Why not?

16 A We never mentioned Harrisburg.

17 Q Again, why not?

18 A Again, if it's the same thing, if
19 you want the whole ball of wax, why -- you
20 don't mention each specific portion of it.

21 Q Let me take you back to 2007.
22 That's when you find out there's a problem

1 because certain Comcast systems had not
2 launched MASN and you're confused, right?

3 A Right.

4 Q Did you give up at that point or
5 did you continue discussing this with Comcast?

6 A No, we called -- actually, I
7 called Alan Dannenbaum.

8 Q And what was that conversation
9 like very briefly?

10 A Very briefly, Alan just said,
11 "That's not the deal. We're not going to
12 launch them".

13 Q And did you --

14 JUDGE SIPPEL: I'm sorry, I didn't
15 hear the last part.

16 THE WITNESS: He said, "We're not
17 launching. That's not the deal, we're not
18 launching".

19 BY MR. KIM:

20 Q And did you try to keep discussing
21 this matter with Comcast?

22 A Yeah, we -- MASN had long

1 protracted discussions with Comcast in 2007
 2 about this. There was a meeting in April with
 3 a number of representatives from both parties.
 4 I think we actually entered into a tolling
 5 agreement at some point to toll any statute of
 6 limitations related to any claims under the
 7 affiliation agreement as a result of these
 8 discussions.

9 Q When was the first time you heard
 10 Comcast say to you that there was low demand
 11 in these regions we're talking about, the
 12 Harrisburg, the Roanoke, Lynchburg and the
 13 Tri-Cities DMAs?

14 A You know, I'll be candid. I don't
 15 recall them ever saying that directly to me.
 16 So I don't ever recall it being said to me.

17 MR. KIM: Thank you, your Honor.
 18 I'll pass the witness.

19 JUDGE SIPPEL: Cross examination?

20 MR. KIRK: Good afternoon, Mr.
 21 Gluck. How are you doing?

22 THE WITNESS: Good.

1 CROSS EXAMINATION

2 BY MR. KIRK:

3 Q Are you an attorney?

4 A Yes, sir.

5 Q Okay. And you have both legal and
6 business expertise with regard to RSNs?

7 A Yes, sir.

8 Q I want to bring you back in time.
9 In 2005, did MASN have a complaint pending
10 before the FCC against Comcast?

11 A My recollection is that MASN filed
12 a carriage complaint. My recollection is,
13 yeah, there was a carriage complaint.

14 Q And was that complaint seeking
15 carriage on all Comcast systems?

16 A Yes, I assume so.

17 Q And then in August 2006, the
18 parties reached the carriage agreement at
19 issue in this case, correct?

20 A That's correct.

21 Q And did that agreement carve out
22 150,000 former Adelphia subscribers?

1 A Yes, yes.

2 Q And did that agreement resolve and
3 release the prior 2005 complaint?

4 A There was a release attached to
5 it. I wasn't involved in drafting that.

6 Q Okay, so the 2006 agreement that
7 had a release carved out 150,000 former
8 Adelphia subscribers. Is MASN now seeking
9 carriage for that same 150,000 subscribers
10 that were carved out of the settlement?

11 A MASN is seeking carriage from
12 Comcast and the systems in the Harrisburg DMA,
13 the Roanoke DMA and the Tri-Cities DMA as well
14 as some scattered systems around Virginia.

15 Q So although the parties settled
16 the 2005 complaint seeking carriage seeking
17 carriage on all systems by agreeing to carve
18 out 150,000 subscribers, MASN is back here
19 today seeking carriage of those 150,000
20 subscribers.

21 A MASN requested in January of 2007
22 that Comcast carry MASN on all the systems

1 that it wasn't carrying MASN at that time and
2 Comcast said no.

3 Q In Paragraph 9 of your testimony,
4 you indicated and just a minute ago that no
5 one from Comcast had indicated to you that
6 there was low demand for MASN; is that
7 correct?

8 A May I look at mine?

9 Q Certainly.

10 JUDGE SIPPEL: You picked a nice
11 short one.

12 THE WITNESS: Yeah, it is a short
13 paragraph, yeah, I can read that real quick.
14 Yes, that's correct.

15 BY MR. KIRK:

16 Q Was MASN aware, regardless of
17 whether Comcast had informed them directly,
18 that Comcast felt there was low demand for
19 MASN prior to August 2006?

20 A You know, I --

21 MR. KIM: Objection, foundation.

22 He's not MASN. If he heard it from somebody,

1 that's a different question.

2 JUDGE SIPPEL: Can you answer the
3 question?

4 THE WITNESS: I think so. To my
5 knowledge, no. In fact, my recollection is in
6 2006 Comcast appealed to Major League Baseball
7 to void the contract with MASN for the
8 nationals rights. Clearly there was some
9 demand somewhere for that and Comcast wanted
10 those rights. That was 2006. So I've never
11 heard that Comcast ever said there was a
12 demand at that point in time.

13 BY MR. KIRK:

14 Q Was Jim Cuddihy an employee of
15 MASN in August 2006?

16 A I don't know the answer to that.

17 Q Okay, did Mr. Cuddihy previously
18 work for CSN Mid-Atlantic?

19 A I understand he did.

20 Q Okay.

21 MR. KIRK: I'd like to approach the
22 witness and present him with Comcast Exhibit

1 21.

2 JUDGE SIPPEL: Yes, sir.

3 MR. KIRK: I've got extra copies,
4 your Honor.

5 MR. KIRK: Would you take a moment
6 to review that document?

7 JUDGE SIPPEL: Yeah, let's go off
8 the record while he reviews that.

9 (Off the record.)

10 JUDGE SIPPEL: Let's go back on the
11 record.

12 THE WITNESS: I've gone ahead and
13 skimmed this. If you only ask me about the
14 first couple of pages, I think I'm okay with
15 it.

16 BY MR. KIRK:

17 Q We've established in prior
18 testimony that this is actually a memo
19 prepared by Mr. Cuddihy for Mr. John Angelos.
20 Do you know whether this information was ever
21 passed to MASN?

22 A I've never seen this before.

1 Q Okay, no further questions on that
2 document. You previously testified that
3 Comcast struck the reference to all systems
4 from the carriage agreement, correct?

5 A That's correct.

6 Q And you testified, I believe it
7 was your understanding that that language was
8 struck to carve out a system; is that correct?

9 A Yes, to make sure that they
10 weren't obligated to launch the systems, yes.

11 Q Did Comcast ever indicate that it
12 would launch MASN to all non-Adelphia systems?

13 A Yes, in my opinion they did.

14 MR. KIRK: I'd like to introduce
15 Comcast Exhibit 110.

16 JUDGE SIPPEL: Okay, let's have it
17 identified.

18 (The document referred to was
19 marked as Comcast Exhibit Number
20 110 for identification.)

21 MR. KIRK: This is excerpts from
22 the deposition of Mr. Gluck.

1 THE WITNESS: Thank you. I assume
2 you don't want me to read this whole thing.

3 MR. KIRK: No, I'll point to every
4 page.

5 THE WITNESS: Okay.

6 JUDGE SIPPEL: Well, again, we have
7 this as highly confidential. So --

8 MR. KIM: Your Honor, if I might --

9 JUDGE SIPPEL: Yes.

10 MR. KIM: -- that's our
11 designation. The bottom line is depending on
12 which portions of it he reads, and I don't
13 think I'll have a problem with the portions
14 that he wants to read.

15 JUDGE SIPPEL: All right.

16 MR. KIM: But if he could give me
17 the page and line numbers, I can confirm if I
18 need to object.

19 MR. KIRK: We're going to be
20 focused on page 118, lines 9 through 17.

21 JUDGE SIPPEL: 118?

22 MR. KIRK: On the bottom it's Com

1 110-37.

2 MR. KIM: I don't -- we don't need
3 to maintain the designation on that, your
4 Honor.

5 JUDGE SIPPEL: Thank you.

6 MR. KIM: You're welcome.

7 THE WITNESS: Okay, I've read that.
8 Just page 118?

9 MR. KIRK: Correct.

10 THE WITNESS: Okay, yes, sir.

11 BY MR. KIRK:

12 Q On lines 9 through 11, do you see
13 the question, "Did anyone from Comcast whether
14 MASN would be carried to all non-Adelphia
15 systems?"\

16 A Yes.

17 Q And on line 17, what was your
18 response?

19 A "I don't believe we did".

20 Q Okay. Can you explain the
21 difference in your testimony?

22 MR. KIM: Objection, that's a

1 characterization.

2 JUDGE SIPPEL: Where are you
3 showing the inconsistency?

4 MR. KIM: Yeah, where is the
5 inconsistency?

6 MR. KIRK: I thought he previously
7 indicated that MASN -- back to the testimony.
8 I'll move on.

9 BY MR. KIRK:

10 Q Was it your belief that the
11 agreement excluded all former Adelphia
12 systems?

13 A You know, at the time, I thought
14 it was all former Adelphia systems. I've come
15 to find later on that they did launch some of
16 them, but what Alan Dannenbaum told us was
17 that there were Adelphia systems representing
18 150,000 subscribers that they did not want
19 launched immediately and they couldn't commit
20 to launching it immediately. In order to get
21 the deal done, we said yes.

22 Q So was it your understanding that

1 the agreement excluded all former Adelphia
2 systems?

3 A My understanding at the time was
4 that was all they were getting from Adelphia
5 was 150,000 subscribers for their systems but
6 that was in August of 2006.

7 Q If you could give me a yes or no
8 answer, do you believe that the agreement
9 excluded all former Adelphia systems that
10 Comcast was acquiring?

11 A At the time I did, yes.

12 Q Okay, were you aware that there
13 were 24 former Adelphia systems listed in
14 Schedule A?

15 A I'm aware of that fact now.
16 There's some number. I don't know if it's 24.

17 Q If the parties intended to
18 specifically carve out the Adelphia systems
19 from the agreement, why didn't they mention
20 that, former Adelphia, that provision in the
21 agreement?

22 A I don't know, you'd have to ask --

1 I think you'd have to ask Comcast. What
2 Andrew Rosenberg said to me was, "This
3 reflects the deal we were discussing and
4 that's what we agreed to".

5 Q MASN signed the agreement,
6 correct?

7 A That's correct.

8 Q You negotiated the agreement,
9 correct?

10 A (Inaudible) *** 3:29

11 Q If you thought Adelphia was being
12 carved out, why did you not put that in the
13 agreement?

14 A I think I already answered that.

15 Q I think you said you should ask
16 Comcast.

17 A Well, what I said was Andrew
18 Rosenberg said, this deal, that he sent me
19 back on the 4th represents what we've been
20 discussing. What we'd been discussing was
21 there would be every system except for these
22 150,000 Adelphia systems that Allen Dannenbaum

1 even said, "We don't know what we have". They
2 couldn't even identify them for us. We asked
3 them to and they couldn't.

4 Q You indicated you're an attorney,
5 correct?

6 A That's correct.

7 Q Are you familiar with Four Corners
8 clause?

9 A Are you referring to the
10 integration clause?

11 Q Yes.

12 A Yes.

13 Q Okay. The agreement that you sent
14 -- let me back up. The agreement that was
15 sent to Comcast in August 2006, was that
16 drafted by you?

17 A Yes.

18 Q Did that contain a provision
19 barring all oral understandings?

20 A It contained an integration clause
21 if that's what you're referring to, yes.

22 Q And more specifically, did it

1 contain a provision barring reliance on oral
2 understandings?

3 A I don't remember the exact
4 language but there's something like that in
5 there, yes. I'm not trying to be difficult.
6 I just want to make sure it's characterizing
7 me correctly. It says what it says.

8 Q You're an attorney. You indicated
9 you drafted the agreement. You've indicated
10 that it had a no oral understandings clause.

11 A Correct.

12 Q And you just testified that you
13 were relying on oral understandings for non-
14 Adelphia; is that correct?

15 MR. KIM: Objection, your Honor.
16 He's answering questions at hearing. I'm not
17 sure -- exactly sure what the point of that
18 question is.

19 MR. KIRK: I'm trying to make sure
20 I have his testimony correct.

21 JUDGE SIPPEL: Yeah, that's -- I'm
22 going to overrule the objection, but it seems

1 to me you're trying to ask the witness to
2 agree with some of your characterizations.
3 But I see the relevance of the question. Go
4 ahead.

5 THE WITNESS: Can you ask it again,
6 I'm sorry?

7 JUDGE SIPPEL: Yeah.

8 BY MR. KIRK:

9 Q Did the agreement that you sent to
10 Comcast contain a no oral understandings
11 clause?

12 A Yes.

13 Q Are you testifying that you
14 believed the former Adelpia systems were
15 excluded based on oral understandings?

16 A They weren't on the list.

17 Q That's not my question.

18 A Exhibit A does not have a list.
19 The contract -- the word "all" was deleted
20 because we were agreeing that they didn't have
21 to launch all the systems. And the systems
22 that they weren't launching were the Adelpia

1 systems. It's not written there because
2 they're not launching them.

3 Q Okay, I'd like a yes or no answer
4 to my question.

5 A I don't have an answer yes or no.

6 Q Yes or no. Were you --

7 A I'm not trying to argue with you,
8 but --

9 Q -- the former Adelphia carve-out
10 that you were just talking about, was that
11 based on oral understandings? Yes or no?

12 A It was part of the negotiations,
13 yes, we negotiated that, yes.

14 JUDGE SIPPEL: I'm taking that to
15 mean a yes.

16 THE WITNESS: Okay, yeah.

17 BY MR. KIRK:

18 Q With regard to the former Adelphia
19 systems, you've indicated that it's difficult
20 to try and ascertain where cable companies
21 operate, correct?

22 A You're talking about my deposition

1 testimony?

2 Q Correct.

3 A Yes.

4 Q Given that difficulty, did you
5 ever think about simply attaching a list of
6 what would be specifically excluded from the
7 agreement?

8 A You know, as we talk about it
9 today, no. I mean, I didn't back then.

10 Q In early '07, you engaged in
11 efforts to conduct a list of what was
12 specifically excluded, correct?

13 A When we found out that Comcast
14 hadn't launched everywhere, we engaged in
15 efforts to find out where, exactly, they
16 hadn't launched and where their systems were,
17 if that's what you're asking, yes.

18 Q Before MASN executed the
19 agreement, did you review the agreement and
20 Schedule A?

21 A Well, certainly, I looked at it,
22 yes. When you say "review", I'm not sure what

1 you mean by reviews. Are you talking about go
2 through each list -- each system on the
3 Schedule A?

4 JUDGE SIPPEL: Well, maybe, let's
5 try and -- when -- what did you do with
6 respect to Schedule A?

7 THE WITNESS: When I got the
8 agreement from Comcast that they'd red-lined,
9 they made some changes to it, we looked at the
10 red lines to see what the effect of those
11 would be. I had that conversation with Andrew
12 Rosenberg, sent the agreement around to MASN
13 internal people, discussed it, did a
14 comparison of the number of subscribers on
15 Schedule A and versus what we understood
16 Comcast to have in the market, the entire
17 market, and then we looked at the changes they
18 made other than the -- adding Schedule A and
19 taking the word "all" out, and the other
20 things, and then we made some additional
21 changes, some minor clean-up changes and sent
22 it back to Comcast.